

### **REMARKS**

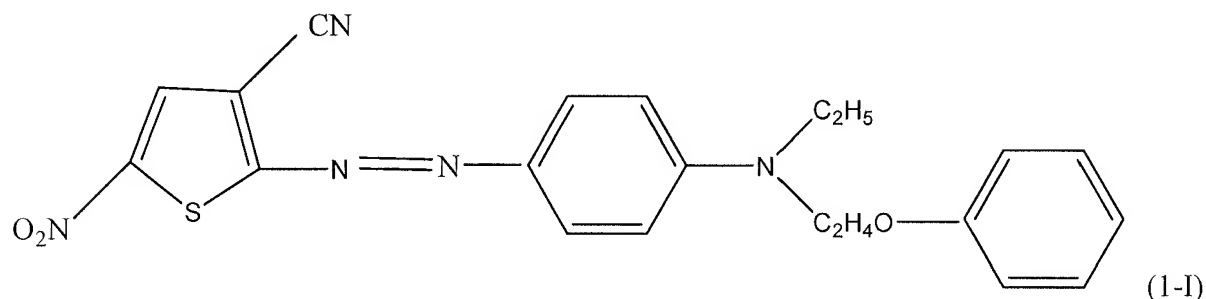
The applicant respectfully requests reconsideration in view of the following remarks.

Claims 9, 11 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,734,028 (Himeno) in view of JP04-164969, 1992, Abstract (Izutsu), and further in view of U.S. 5,332,404 (Himeno '404). Claims 10, 12 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno, Izutsu, Himeno '404, as applied to claims 9, 11 and 13 and further in view of JP06-345989 A, machine translation (Tsumura). Claims 15 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno, Izutsu, Himeno '404, and Tsumura and further in view of US 5,608,042 (Himeno'042). Claims 17 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno et al., Izutsu et al., Himeno '404, Tsumura, Himeno '042, and further in view of US 5,824,118 (Akai). Claims 9, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno '028 in view of Izutsu and further in view of Himeno '404. Claims 10, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno '028, Izutsu and Himeno '404 as applied to claims 9, 11 and 13, and further in view of Tsumura. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno '028, Izutsu, Himeno '404, and Tsumura, as applied to claims 9-14. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno '028, Izutsu, Himeno '404, Tsumura, and Himeno '042, as applied to claims 9-16. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Himeno '404. The applicant respectfully traverses these rejections.

In response to the Advisory action, the Examiner is correct, that the applicant did not compare prior art example 7 of Himeno (US 5,734,028). The applicant believes that the

illustration of unexpected results by comparing said example 7 is not necessary as the compared prior art examples are structurally closer to the claimed mixtures:

Example 7 is a mixture of dyes (3) and (1-1) of Himeno. While dye (3) corresponds to dye (1) of the present claims and is "Dyestuff (a1)" of the Declaration provided by Adrian Murgatroyd, dye (1-1) has nothing to do with the present application and none of the formulae disclosed in the present application comprises this dye. Dye (1-1) is of the formula



Again, dye (1-I) has nothing to do with the applicant's claimed invention!

The Murgatroy Declaration illustrates unexpected results by comparing example 75 of Himeno (US 5,332,404), which is a mixture of two dyes. The first corresponds to formula (2) of the present claims and the second corresponds to formula (3) of the present claims. Accordingly, both dyes of Example 75 are within the formulae of claim. Consequently, example 75 of US 5,332,404 is closer to the invention than example 7 of US 5,734,028. Therefore, the applicant's have compared the closest prior art.

As previously stated, the applicant has already compared the three single dyes of the inventive mixture as they are all known dyestuffs and the mixture of dyes (2) and (3) which is disclosed in prior art as well (see Mixture A of the Declaration). The applicant has compared the following:

- 1) Dyestuff which is an isomer of formulae (a1) and (a2),
- 2) Dyestuff of the formula (b),
- 3) Dyestuff of the formula (c),
- 4) Dyestuff Mixture A comprising
  - 75 % by weight of the dyestuff to formula (b)
  - 25 % by weight of the Dyestuff of formula (c), [This corresponds to Example 75 of US 5,332,404, the closest prior art example]
- 5) Dyestuff Mixture B comprising
  - 60 % by weight of the Dyestuff (a)
  - 10% by weight of the Dyestuff (b) and
  - 30 % by weight of the Dyestuff (c),
- 6) Dyestuff Mixture C comprising
  - 60 % by weight of the Dyestuff (a)
  - 30% by weight of the Dyestuff (b) and
  - 10 % by weight of the Dyestuff (c),
- 7) Dyestuff Mixture D comprising
  - 30 % by weight of the Dyestuff (a)
  - 60% by weight of the Dyestuff (b) and
  - 10 % by weight of the Dyestuff (c),
- 8) Dyestuff Mixture E comprising
  - 10 % by weight of the Dyestuff (a)
  - 60% by weight of the Dyestuff (b) and
  - 30 % by weight of the Dyestuff (c)

These eight examples have 3 comparisons that are according to the prior art (examples 1-3) and one not covered by the claimed invention (example 4) Mixture A. **The applicant has compared the closest prior art example which is example 75 of US 5,332,404 (see no. 4).** Mixtures B-E (examples 5-8) are according to the claimed

invention and show the use of a mixture containing 5 different percentages of Dyestuffs a, b and c having the specific ranges

10 to 60% by weight of Dyestuff a (note that Mixtures B and C contain 60%, while Mixture D contains 30% and Mixture E contains 10% by weight of Dyestuff a),

10 to 60% by weight of Dyestuff b (note that Mixture B contain 10%, while mixture C contains 30% and mixtures D and E contains 60% by weight of Dyestuff b), and

10 to 30% by weight of Dyestuff c (note that Mixtures B and E contain 30%, while mixtures C and D contain 10% by weight of Dyestuff c),

The applicant believes that the dyestuff according to the invention are clearly commensurate in scope since the applicant has shown examples of dyestuff a at 10%, 30% and 60% by weight, shown examples of dyestuff b at 10%, 30% and 60% by weight, shown examples of dyestuff c at 10% and 30% by weight. Furthermore, the applicant established unexpected results with respect to build up properties and the Integ values (see pages 4 and 5 of the Declaration). The applicant believes that these results are commensurate in scope with the claimed invention. Again, mixtures B-E show the use of a mixture which contains:

10 to 60% by weight of Dyestuff a,

10 to 60% by weight of Dyestuff b and

10 to 30% by weight of Dyestuff c.

For the above reasons, these rejections should be withdrawn. In view of the above response, applicant believes the pending application is in condition for allowance.

A three month extension fee and Notice of Appeal have been paid. Applicant believes no additional fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 05579-00350-US from which the undersigned is authorized to draw.

Respectfully submitted,

Electronic signature: /Ashley I. Pezzner/  
Ashley I. Pezzner

Registration No.: 35,646  
CONNOLLY BOVE LODGE & HUTZ LLP  
1007 North Orange Street  
P. O. Box 2207  
Wilmington, Delaware 19899-2207  
(302) 658-9141  
(302) 658-5614 (Fax)  
Attorney for Applicant